COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications	)	
and Energy On its Own Motion Pursuant to	)	D.T.E. 01-106
G.L. c. 159, § 105 and G.L. c. 164, § 76 to Investigate	)	D.T.E. 05-55
Increasing the Penetration Rate for Discounted Electric,	)	D.T.E. 05-56
Gas and Telephone Service	)	

OPPOSITION OF KEYSPAN ENERGY DELIVERY NEW ENGLAND TO ATTORNEY GENERAL'S MOTION FOR RECONSIDERATION

I. INTRODUCTION AND PROCEDURAL HISTORY

On August 8, 2003, the Department of Telecommunications and Energy (the "Department"), issued an order establishing a computer matching program for electric distribution companies and local gas distribution companies to facilitate the enrollment of eligible customers in utility discount rate programs. Investigation re: Discount Program Participation Rate, D.T.E. 01-106-A (2003). In that order, the Department (i) directed electric and gas companies to electronically transfer customer account information on a quarterly basis to the Executive Office of Health and Human Services ("EOHHS") so that EOHHS could match this information with its database of recipients of means tested public benefit programs and identify customers who are eligible for utility discount rate programs; (ii) directed electric and gas companies to presumptively enroll all eligible customers identified through the computer match in applicable discount rate programs with subsequent notice to customers of their right to unenroll and; (iii) stated that issues related to cost recovery due to increased participation in low income discount rate programs as a result of the computer match program would be addressed in a separate proceeding. Id. at 12-13.[1]. Subsequently, on October 15, 2005, following notice, a public hearing and an opportunity for parties to submit written comments, the Department issued its order in Discount Rate Participation, D.T.E. 05-55/05-56/01-106-C (2005). (the "October Order"). The October Order established a methodology for electric and gas companies to recover lost revenues associated with increased participation on utility discount rates and directed the companies to file Residential Assistance Adjustment Clause ("RAAC") tariffs consistent with the Department's revenue recovery methodology. October Order at 8, 15.

On November 3, 2005, the Office of the Attorney General ("Attorney General") filed with the Department a Motion for Reconsideration (the "Motion") of the October Order. The Attorney General asked the Department to reconsider four issues:: (1) whether the cost recovery mechanism established in the October Order is the appropriate mechanism for companies to recover costs associated with discount rate enrollment; (2) whether the new mechanism conforms to the Department's directives in D.T.E. 01-106-B; (3) whether the disparity in recovery amounts among utilities renders the tariff "defective"; and (4) whether the use of the prime interest rate and the lack of refund of any baseline amount to customers serves the public interest.[2] On November 15, 2005, the hearing officer in this proceeding issued a memorandum establishing a deadline of November 28, 2005 for parties to submit comments in response to the Motion.

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1 On December 6, 2004, the Department issued an order in Discount Rate Participation, D.T.E. 01-106-B which, among other things, confirmed the Department's recognition in D.T.E. 01-106-A that distribution companies may incur a decrease in revenues from increased participation in discount rates once the computer –matching program begins, and that it is reasonable to modify the method of recovering the low-income discount.

2 On November 5, 2005, the Attorney General supplemented the Motion with an Affidavit of Timothy Newhard.

In summary, KeySpan Energy Delivery New England[3] ("KeySpan") requests that the Department deny the Attorney General's Motion because it fails to meet the Department's standard of review for reconsideration in that it does not : (1) establish any previously unknown or undisclosed facts that would have an impact on the October Order, (2) demonstrate that the October Order was the product of a mistake or inadvertence or (3) demonstrate that the parties did not have adequate notice of the issue and an opportunity to present evidence and argument.

II. STANDARD OF REVIEW

The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that the Department should take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987). A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987)

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[3] The LDCs that operate as KeySpan Energy Delivery New England in Massachusetts are: Boston Gas

Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

Reconsideration also may be appropriate where parties have not been "given notice of the issues involved and accorded a reasonable opportunity to prepare and present evidence and argument" on an issue decided by the Department. Petition of CTC Communications Corp., D.T.E. 98-18-A at 2, 9 (1998).

III. THE ATTORNEY GENERAL'S MOTION FAILS TO MEET THE DEPARTMENT'S STANDARD OF REVIEW FOR RECONSIDERATION AND SHOULD BE DENIED

The Attorney General bases his Motion on the following allegations: (1) a change in the gas and electric company reconciling tariffs require full evidentiary hearings; (2) Department precedent requires a baseline reflecting data from each company's last rate case; (3) there is not consistent and uniform cost recovery among the companies; (4) if a baseline based on data from the prior twelve-months is used, some companies will over-collect lost revenues without reimbursement of non-low-income customers; and (5) interest on over- or under-recoveries at the prime rate is harmful to non-low-income customers. (Motion at 4). As discussed below, the Attorney General's allegations do not meet the Department's standard of review for reconsideration. Moreover, the Attorney General's allegations are not supported by either statute or Department precedent. Accordingly, the Department should deny the Attorney General's Motion.

Company, Colonial Gas Company, and Essex Gas Company.

A. The Adoption of the Department's Alternative Recovery Methodology Does Not Require An Adjudicatory Hearing

The Attorney General contends that "[a]ny proposals to initiate formula reconciling tariffs that increase rates must be subject to a hearing before the Department under G.L. c. 164, § 94, to set just and reasonable rates" (id. at 4). In support of this contention he cites the Supreme Judicial Court's (the "Court") holding in Consumer Organization For Fair Energy Equity, Inc. v. Department of Public Utilities, 368 Mass. 599, 606 (1975) (id. at 4-5). (The "Consumer Organization Case"). However, the Attorney General misstates both the Court's holding and the statutory language on which the decision is based. The Court's decision in Consumer Organization was focused narrowly on whether hearings were necessary pursuant to Section 94 in the context of proposed fuel cost increases through electric company fuel adjustment clause tariffs. Id. at 601. The Court determined that they were not. Id. at 605-608. Significantly, the Court's decision did not address whether an increase under a fuel adjustment clause constitutes a general increase in rates that would trigger the public hearing provisions of Section 94. Id. at 604, n.7. Thus, the Court's decision does not support the Attorney General's position.

Section 94 limits the need for a public hearing to filings that propose changes to a schedule filed under Chapter 164 "which represent *a general increase in rates*." G.L. c. 164, § 94. The adoption of the Department's alternative recovery methodology in the KeySpan Local Distribution Adjustment Factor ("LDAF") does not represent a general increase in rates, but rather, allows KeySpan the opportunity to adjust its distribution rates as they relate to the recovery of discount rate revenue only until its next rate case.

D.T.E. 01-106-C/D.T.E. 05-55/D.T.E. 05-56, at 7-8. The adjustments will occur only to the extent of increased participation on discount rates over the twelve-month baseline period ending June 30, 2005. To the extent that the lost revenues during any reconciliation period are no greater than the lost revenues realized by a company during the baseline period then, there will be no adjustment. Id. at n.3. Thus, the KeySpan filing does not trigger the public hearing requirement of section 94.

Moreover, Section 94 requires only that the Department "hold a public hearing and make an investigation" as to the propriety of changes to rate schedules that represent a general increase in rates. The Department, in fact, held a public hearing in this proceeding on September 16, 2005 which was attended by an Assistant Attorney General. Further, the Attorney General had an adequate opportunity to present evidence and argument in this proceeding. The Department conducted an extensive multi-year investigation in this docket, and related dockets, which the Attorney General was a party to and in which he filed two sets of comments. The Attorney General also participated in a technical session at the Department with the electric and gas companies specifically on the ratemaking issues regarding cost recovery alternatives. See D.T.E. 01-106-C/D.T.E. 05-55/D.T.E. 05-56, at 1-3, citing in part, Comments of the Attorney General on the Department's proposed Alternative Methodology (September 30, 2005); see also D.T.E. 01 -106-B/D.T.E. 05-55/D.T.E. 05-56, Comments of the Attorney General (September 14, 2005). Thus, even if the Company's filing triggered the requirements of Section 94, the Department's procedure was consistent with the requirements of Section 94 in that the Department held a public hearing and conducted a full investigation into the propriety of the cost recovery mechanisms filed by the electric and gas companies in this proceeding. Accordingly, the Attorney General's argument should be rejected.

B. The Baseline Established by the Department Is Consistent with D.T.E. 01-106-B.

The Attorney General alleges that the Department's decision to establish a baseline for calculating the cost recovery mechanism by using lost discount rate revenues collected in base rates for the twelve months ending June 30, 2005 is inconsistent with Department precedent (Motion at 6-7). However, the Attorney General has neither alleged any new facts (or arguments) since his September 30, 2005 comments. (See, Attorney General Comments at 2-3) nor has he suggested that the Department's baseline methodology was established through mistake or inadvertence. The Department addressed The Attorney General's' comments in the October Order, and found that the Attorney General's proposed methodology for establishing a baseline would not "improve the accuracy of the calculation of the baseline amount" over the Department's own methodology. October Order at 10. As reflected in the October Order, the Attorney General had adequate opportunity to present his argument during the course of the proceeding, which argument was considered by the Department and rejected. Therefore, the Attorney General's request to reconsider this aspect of the October Order should be denied because the request fails to meet the Department's standard of review for reconsideration.

Moreover, the Department's alternative cost recovery methodology is consistent with its order in a prior phase of this proceeding, D.T.E. 01-106-B. In D.T.E. 01-106-B the Department directed companies to propose a reconciliation factor based on the difference between forecasted discount rate-related lost revenues and "the amount of the low-income subsidy that was approved in the company's last rate case or settlement, adjusted for any changes in sales and the number of low-income customers as of the effective date of the computer matching program." D.T.E. 01-106-B at 9-10. The Department's Alternative Cost Recovery Methodology accomplishes this by allowing companies to use their actual discount rate revenues collected in rates during the period of July 1, 2004 to June 30, 2005 as a baseline for determining whether an adjustment is justified. A company's actual discount rate-related lost revenues during any given period of time are calculated based on the amount of discount rate-related lost revenues allowed to be collected in rates from a company's last rate case , adjusted for actual sales and actual number of discount rate customers.. Accordingly, the Department's methodology for determining a baseline includes the same variables articulated by the Department in D.T.E. 01-106-B.

C. The Cost Recovery Mechanisms Are Uniform in Design.

The Attorney General contends that the RAAC tariffs resulting from the Order are not "uniform" or revenue neutral (Motion at 5). contrary to the Attorney General's allegations, the cost recovery mechanisms are uniform in that they each are consistent with the Department's "Alternative Methodology" of September 27, 2005. Although individual companies used slightly different formatting and narrative styles consistent with their other company specific Department-approved tariffs, these non-substantive differences do not represent a lack of uniformity in the methodology for calculating recovery factors.

To the extent that, the Alternative Methodology specifically delineates uniform categories of discount rate-related costs that are allowed to be recovered, the implementation of company specific recovery mechanisms will yield similar results for customers. This is because the types of costs allowed to be collected by any one company are the same for all companies.

D. The Attorney General's Claims Regarding Possible Over Collections Of Discount Rate Revenues Do Not Meet The Department' Standard Of Review For Reconsideration.

The Attorney General's Motion contends that the Department's cost recovery mechanism methodology will "exacerbate" "overcollections" in discount rate lost revenues identified by the Attorney General in the gas and electric companies' respective responses to Department discovery in this proceeding. See D.T.E. 01-106/D.T.E. 05-55/D.T.E. 05-56 (Information Request DTE-1-1). To support this argument, the Attorney General points out that that Department's methodology does not provide for refunds to customers in the event that a company's discount rate lost revenue in a given reconciliation period is below the company's baseline calculation. (Motion at 8).

The Department addressed this issue in the October Order. Specifically, the Department stated that that its Alternative cost recovery mechanism is not intended to displace the ebb and flow of traditional ratemaking where revenues from the discount rate program are designed to be recovered from all customers through base rates. Order at 11. Rather, the mechanism is intended to address short-term potential revenue shortfalls that may occur because of a change in the Department's discount rate outreach policy that was neither known nor measurable when base rates were established for each gas and electric company. Id. The Attorney General's motion raises no new facts or arguments but is merely a re-argument of the facts already decided by the Department. Therefore, the request for reconsideration should be denied.

E. The Department's Decision To Allow Interest To Accrue At The Prime Rate Is Appropriate.

Finally**,** the Attorney General requests that the Department reconsider its decision to allow interest to accrue on over-or under-recoveries of incremental discount rate revenues using the prime interest rate (Motion at 9). Again, however, the Attorney General cites no new facts or alleges a mistake that would warrant reconsideration of this provision. As noted by the Department in its order, gas companies are required by the Department's regulations at 220 C.M.R. § 6.08(2) to use the prime rate to calculate interest relating to gas cost over- and under-recoveries. Accordingly, the Department should deny the Attorney General's request for reconsideration of this aspect of the Order.

IV. CONCLUSION

For the foregoing reasons, the Department should deny the Attorney General's Motion for Reconsideration.

Respectfully submitted,
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By its Attorney,

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